

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TERWIN ADVISORS LLC,

Plaintiff,

-against-

AMERICAN LENDING GROUP, INC.,

Defendant.

Case No.: 07 Civ. 10631 (WHP)

ECF Case

**DECLARATION OF
GERALD CASEY IN SUPPORT
OF MOTION FOR
DEFAULT JUDGMENT**

GERALD CASEY hereby declares, under penalty of perjury:

1. I am a principal of plaintiff Terwin Advisors LLC ("Terwin") responsible for Terwin's Asset Performance Management Group. I am personally familiar with the facts set forth herein.
2. I submit this declaration pursuant to Local Civil Rule 55.2(b), in support of the motion of plaintiff Terwin Advisors LLC ("Terwin"), by order to show cause, for a default judgment against defendant American Lending Group, Inc. ("ALG"). Unless otherwise indicated, I have personal knowledge of the facts set forth herein.
3. As set forth in Terwin's Complaint,¹ a copy of which is attached to the accompanying Jacob Declaration as Exhibit 1, ALG sold Terwin a number of mortgage loans pursuant to a Seller's Purchase, Warranties and Interim Servicing Agreement (the "Purchase Agreement").
4. In the Purchase Agreement, Terwin and ALG contracted for ALG to sell to Terwin certain Mortgage Loans (as defined in the Purchase Agreement), and

¹ Each capitalized term used but not defined herein shall have the meaning ascribed to such term in the Declaration of Charles R. Jacob III, executed February 28, 2008 (the "Jacob Declaration") and also submitted in support of the Application.

ALG agreed to repurchase those Mortgage Loans under the circumstance referred to as “Early Payment Default” or “EPD,” described below.

5. Pursuant to § 3.05 of the Purchase Agreement, entitled “Repurchase of Mortgage Loans With Early Payment Defaults,” ALG agreed to repurchase from Terwin Mortgage Loans (“Early Payment Default Loans” or “EPD Loans”) as to which there occurred payment defaults within three months after the Closing Date (as defined in the Purchase Agreement) for such Mortgage Loans. Section 3.05 of the Purchase Agreement provides as follows:

If (a) a Mortgagor is thirty (30) days or more delinquent with respect to any of the first three (3) Monthly Payments due on the related Mortgage Loan immediately following the applicable Closing Date or (b) a Mortgage Loan is in bankruptcy or litigation within the first three (3) months immediately following the applicable Closing Date, the Seller [ALG], at the Purchaser’s option, shall promptly repurchase such Mortgage Loan from the Purchaser within five (5) Business Days of receipt of written notice from the Purchaser, in accordance with the procedures set forth in Section 3.03 hereof, however, any such repurchase shall be made at the Repurchase Price.

6. Thus, the Purchase Agreement gave Terwin the right to cause ALG to repurchase, and imposed on ALG the obligation to repurchase, at the Repurchase Price (as defined), any Early Payment Default Loans as to which Terwin requested repurchase.

7. Certain of the Mortgage Loans that Terwin purchased from ALG pursuant to the Purchase Agreement were Early Payment Default Loans, that is, Mortgage Loans as to which (a) a Mortgagor (as defined) was thirty (30) days or more delinquent with respect to any of the first three (3) Monthly Payments due on the related Mortgage Loan immediately following the applicable Closing Date or (b) the Mortgage

Loan was in bankruptcy or litigation within the first three (3) months immediately following the applicable Closing Date.

8. Terwin gave ALG written notice of such Early Payment Default Loans and exercised Terwin's option to require ALG to repurchase such Early Payment Default Loans, all in accordance with the terms of the Purchase Agreement.

9. This action concerns nine (9) Early Payment Default Loans that ALG was obligated to repurchase from Terwin. ALG has failed to repurchase the Early Payment Default Loans or pay Terwin any part of the Repurchase Price.

10. Since ALG has not appeared in this action, Terwin cannot reconvey the Early Payment Default Loans to ALG in exchange for the Repurchase Price. Terwin was forced to liquidate Mortgage Loans by foreclosures or other means, and incurred damages as a result.

11. Terwin's damages consist of the contractual Repurchase Price, as defined in the Complaint, less the actual or estimated proceeds that have been or will be realized from the nine (9) Early Payment Default Loans that ALG failed to repurchase.

12. "Repurchase Price" is defined in Section 1.01 of the Purchase Agreement as follows:

With respect to any Mortgage Loan, a price equal to (i) the greater of (A) the product of the percentage of par stated in the related Purchase Price and Terms Letter and the outstanding principal balance of the Mortgage Loan and (B) the outstanding principal balance of the Mortgage Loan, plus (ii) interest on such outstanding principal balance at the related Mortgage Interest Rate from the date through which interest was last distributed to the Purchaser through the day prior to the date of repurchase, plus (iii) any costs and damages actually incurred and paid by or on behalf of the Purchaser in connection with any breach of a representation or warranty hereunder (including, without

limitation, those set forth in Section 3.02(i) and 3.02(jjj) relating to a violation of a predatory or abusive lending law applicable to such Mortgage Loan, plus (iv) third party expenses incurred in connection with the transfer of the Mortgage Loan being repurchased; less amounts received or advanced in respect of such repurchased Mortgage Loan which are being held in the Custodial Account for distribution in the month of repurchase, plus (v) any unreimbursed Servicing Advances or Servicing Fee, plus (vi) all fees and expenses of Purchaser's outside counsel and court costs incurred in connection with the enforcement of the Seller's repurchase obligation.

13. Terwin followed this formula as to each of the nine (9) Early Payment Default Loans to arrive at the Repurchase Price. For Loan Nos. 100061042, 100063068, and 100073249, Terwin has subtracted from the Repurchase Price the proceeds of any realization, by foreclosure or otherwise, for each such Early Payment Default Loan. For Loan Nos. 100047102, 100060637, and 100070636, Terwin has subtracted from the Repurchase Price the estimated proceeds of any realization. For Loan Nos. 100023366, 100060639, and 100073250, there were no proceeds because the value of the underlying property was less than the value the lien loan.

14. Using the aforementioned methodology as to each of the nine (9) of the Early Payment Default Loans, Terwin arrived at the amount of its realized losses. It is those realized losses as to which Terwin requests an award of damages. Attached hereto as Exhibit A is a spreadsheet setting forth Terwin's realized losses as to each of the nine (9) Early Payment Default Loans, for a total liquidated amount of \$978,085.

15. The computation of realized losses set forth on Exhibit A, by the nature of how it was made, includes unpaid interest through the date of computation, which is February 29, 2008. Interest to date from February 29, 2008, is running at the

amount of \$241 per diem. Terwin computed this by multiplying \$978,085 by the New York statutory interest rate of 9%, and dividing the result by 365 days.

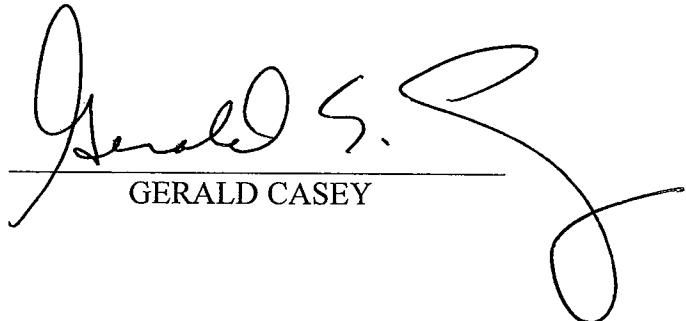
16. Terwin respectfully requests that the Court grant a default judgment against ALG in the total of these amounts:

- Breach of contract damages in the amount of \$978,085, computed as set forth above; plus
- Interest from February 29, 2008 to the date of entry of judgment at the per diem rate of \$241.

17. No part of the total requested judgment amount has been paid.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 21th day of February, 2008



The image shows a handwritten signature in black ink, which appears to read "Gerald S. Casey". The signature is fluid and cursive. Below the signature, the name "GERALD CASEY" is printed in a smaller, more formal font, likely a typed or printed version of the signature above it.

Exhibit A

| <u>tvg #</u> | <u>cust #</u> | <u>svc #</u> | <u>borrower</u> | <u>lien</u> | <u>rate</u> | <u>current balance</u> | <u>paid thru date</u> | <u>purchase price</u> | <u>principal</u> | <u>days interest to 2/29/08</u> | <u>interest</u> | <u>advances</u> | <u>repurchase total</u> | <u>re-price</u> | <u>estimated proceeds</u> | <u>estimated loss due</u> |
|--------------|---------------|--------------|-----------------|-------------|-------------|------------------------|-----------------------|-----------------------|------------------|---------------------------------|-----------------|-----------------|-------------------------|-----------------|---------------------------|---------------------------|
| 100047102 | 10047102 | 1001394185 | COLON | 1 | 6.88 | 239,192 | 01/01/2008 | 100.90 | 241,342 | 59 | 2,658 | - | 244,000 | 38.27 | 91,539 | 152,461 |
| 100060637 | 5408271 | 1002371848 | DANHAUER | 1 | 8.62 | 191,865 | 03/01/2007 | 98.58 | 189,145 | 365 | 16,539 | 13,623 | 219,306 | 55.70 | 106,869 | 112,437 |
| 100070636 | 22466 | 1002266836 | NELSON | 1 | 9.63 | 376,000 | 12/01/2006 | 102.14 | 384,034 | 455 | 45,114 | 15,102 | 444,249 | 49.04 | 184,390 | 259,859 |
| | | | | | | | | | | | | | | | | 524,758 |

| <u>Dreq #</u> | <u>cust #</u> | <u>Svc #</u> | <u>borrower</u> | <u>lien</u> | <u>rate</u> | <u>purchase bal.</u> | <u>current bal.</u> | <u>bal at liquidation</u> | <u>proceeds..</u> | <u>advance fees in interest due to liquidation</u> | <u>purchase price, realized loss</u> | <u>liquidation date</u> | <u>due interest after liquidation</u> | <u>interest after liquidation to 2/25/2008</u> | <u>loss due</u> | | |
|---------------|-------------------|--------------|-----------------|-------------|-------------|----------------------|---------------------|---------------------------|-------------------|--|--------------------------------------|-------------------------|---------------------------------------|--|-----------------|-------|---------|
| 100023366 | 501110000 | 1000503964 | CALAM | 1 | 8.13 | 40,474 | - | 39,623 | (595) | 12,672 | 21/12/06 | 100,72 | 52,880 | 1/31/2008 | 28 | 378 | 53,268 |
| 100060639 | 5408222 | 1001903877 | DANHAUER | 2 | 12.00 | 48,172 | - | 47,619 | - | 42 | 4/1/2007 | 85,72 | 47,661 | 11/30/2007 | 91 | 1,069 | 48,730 |
| 100061042 | 100061042 | 1002019728 | SUTTERER | 2 | 13.75 | 65,362 | - | 65,295 | 19,487 | 3,183 | 8/1/2006 | 100,25 | 48,591 | 2/28/2007 | 366 | 4,385 | 52,976 |
| 100073068 | 10007300000063000 | 1002779042 | FOUSE | 1 | 7.88 | 109,649 | - | 109,649 | 10,439 | - | 1/1/2007 | 101,38 | 100,727 | 6/15/2007 | 259 | 6,433 | 107,158 |
| 100073249 | 5203017 | 1002711709 | FOX | 1 | 8.88 | 407,771 | - | 407,771 | 341,674 | - | 10/1/2006 | 103,15 | 76,955 | 6/15/2007 | 259 | 5,042 | 83,988 |
| 100073249 | 100073249 | 1002406438 | FOX | 2 | 14.50 | 101,983 | - | 101,844 | - | 3,789 | 5/1/2007 | 93,45 | 105,633 | 12/31/2007 | 60 | 1,563 | 107,196 |
| | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | 453,327 |